

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PROTECTIVE OPTICS, INC.,

No. C 05-2732 CRB

Plaintiffs,

ORDER

v.

PANOPTX, INC.,

Defendant.

Oral argument on the claim construction hearing is scheduled for hearing at 2:30 p.m. on October 5, 2006. At oral argument, the parties should focus their discussion on the issues raised by the following questions.

1. What intrinsic evidence supports or refutes a claim construction of any of the disputed terms requiring the eye shield system to “absolutely exclude” liquids or solids?
2. Does the intrinsic evidence require that the claim scope be restricted to the embodiment of protecting medical workers from highly dangerous microorganisms? If not, and other embodiments are included within the scope of the invention, do the claim terms then warrant a broader interpretation such as “substantially exclude” rather than “absolutely exclude”?

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- 2 3. (a) If the claim terms “blocks” and “resists” are determined to mean “hinder” or
- 3 “partially stop” the passage of fluid, is this construction necessarily inconsistent with
- 4 the purpose of the claimed invention? (b) If liquid is splashed on the shield, and the
- 5 shield is detached and disposed of before the liquid would make it through the
- 6 material, then is the shield acting to “block” or “resist” the passage of the liquid?
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- 8 4. Is the teaching in the specification regarding how the eye shield system is to be held in
- 9 place consistent with the understanding that one skilled in the art would have about
- 10 how to “prevent” passage of liquids between the shield and the face, or how “to seal”
- 11 the shield against the face?
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13 Each side will be permitted thirty minutes for argument.

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15 **IT IS SO ORDERED.**

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17 Dated: October 3, 2006

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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE